

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

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|---|---|------------------------|
| BARCLAY TABER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. CIV-12-1113-D |
| |) | |
| JUSTIN JONES, Director, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

ORDER

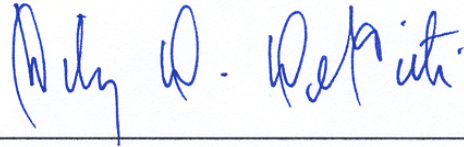
This matter is before the Court for review of the Supplemental Report and Recommendation issued by United States Magistrate Judge Gary M. Purcell, pursuant to 28 U.S.C. § 636(b)(1)(B). Upon consideration of Defendant Justin Jones' Motion to Dismiss,¹ Judge Purcell recommends the dismissal of Plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 for failure to state a claim under Fed. R. Civ. P. 12(b)(6), and counting the dismissal as one "prior occasion" or "strike" under 28 U.S.C. § 1915(g).

Plaintiff, who appears *pro se* and *in forma pauperis*, has neither filed a timely objection to the Supplemental Report nor requested additional time to object. The Court therefore finds Plaintiff has waived further review. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996). Further, upon *de novo* consideration of the issues, the Court finds Judge Purcell's analysis to be correct. The Court concurs in Judge Purcell's recommendation to dismiss this action without prejudice.

¹ Plaintiff's request to voluntarily dismiss two other named defendants was previously granted. *See* Order of April 2, 2013 [Doc. No. 17].

IT IS THEREFORE ORDERED that the Court adopts the Supplemental Report and Recommendation [Doc. No. 22] in its entirety. Defendant Justin Jones' Motion to Dismiss [Doc. No. 20] is GRANTED to the extent that the Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 is dismissed without prejudice for failure to state a claim upon which relief can be granted. The dismissal shall count as a "prior occasion" pursuant to 28 U.S.C. § 1915(g) after Plaintiff has exhausted or waived his right to appeal. A separate judgment shall be entered accordingly.

IT IS SO ORDERED this 30th day of May, 2013.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE